

# LATHAM & WATKINS

ATTORNEYS AT LAW

1001 PENNSYLVANIA AVE., N.W.

SUITE 1300

WASHINGTON, D.C. 20004-2505

TELEPHONE (202) 637-2200

FAX (202) 637-2201

PAUL R. WATKINS 1999-1973  
DANA LATHAM 1998-1974

## CHICAGO OFFICE

SEARD TOWER, SUITE 5800

CHICAGO, ILLINOIS 60605

PHONE (312) 875-7700, FAX 993-9767

## HONG KONG OFFICE

23RD FLOOR

STANDARD CHARTERED BANK BUILDING

4 DES VOEUX ROAD CENTRAL HONG KONG  
PHONE + 852 2905 6400, FAX 2905 6940

## LONDON OFFICE

ONE ANGEL COURT

LONDON EC2R 7HU ENGLAND

PHONE + 44 (0) 374 4444, FAX 374 4460

## LOS ANGELES OFFICE

633 WEST FIFTH STREET, SUITE 4000

LOS ANGELES, CALIFORNIA 90071-2007

PHONE (213) 485 1234, FAX 891-8763

## MOSCOW OFFICE

ULITS A GASHEKA, 7-9TH FLOOR

MOSCOW 125047, RUSSIA

PHONE + 7 095 785 1234, FAX 785-1235

## NEW JERSEY OFFICE

ONE NEWARK CENTER, 16TH FLOOR

NEWARK, NEW JERSEY 07101-3174

PHONE (973) 639 1234, FAX 639-7298

## NEW YORK OFFICE

885 THIRD AVENUE, SUITE 1000

NEW YORK, NEW YORK 10022-4802

PHONE (212) 906-1200, FAX 751-4864

## ORANGE COUNTY OFFICE

650 TOWN CENTER DRIVE, SUITE 2000

COSTA MESA, CALIFORNIA 92626-1925

PHONE (714) 540-1235, FAX 755-8290

## SAN DIEGO OFFICE

701 "B" STREET, SUITE 2100

SAN DIEGO, CALIFORNIA 92101-8197

PHONE (619) 236-1234, FAX 696-7419

## SAN FRANCISCO OFFICE

505 MONTGOMERY STREET, SUITE 1900

SAN FRANCISCO, CALIFORNIA 94111-2562

PHONE (415) 391-0600, FAX 395-8095

## SILICON VALLEY OFFICE

75 WILLOW ROAD

MENLO PARK, CALIFORNIA 94025-3656

PHONE (650) 328-4600, FAX 463-2600

## SINGAPORE OFFICE

20 CECIL STREET, #25-02/03/04

THE EXCHANGE, SINGAPORE 049705

PHONE + 65-536-1161, FAX 536-1171

## TOKYO OFFICE

INFINI AKASAKA, 8-7-15, AKASAKA, MINATO-

TOKYO 107, JAPAN

PHONE +813-3423-3970, FAX 3423-397

DOCKET FILE COPY ORIGINAL

December 15, 1999

## BY HAND

Magalie Roman Salas, Secretary

Federal Communications Commission

Office of the Secretary

445 12<sup>th</sup> Street, S.W.

Washington, D.C. 20554

RECEIVED  
DEC 15 1999  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC 99J-2  
Reply Comments on the Interim Hold-Harmless Mechanism of the  
Independent Telephone and Telecommunications Alliance (ITTA)

Dear Ms. Salas:

Enclosed please find an original and 4 copies of the Comments of the Independent Telephone and Telecommunications Alliance (ITTA) in the above-referenced proceeding.

If you have any questions regarding this matter, please call me at (202) 637-2225.

Sincerely,



Richard R. Cameron

cc: Service List Attached

DC\_DOCS\269341.1 [W97]

No. of Copies rec'd  
List ABCDE

5/14/99

## SERVICE LIST

Martha Hogerty  
Public Counsel  
Missouri Office of Public Counsel  
301 West High St., Suite 250  
Truman Building  
P.O. Box 7800  
Jefferson City, MO 65102

Laska Schoenfelder  
Commissioner  
South Dakota Public Utilities Commission  
State Capitol, 500 East Capitol Street  
Pierre, SD 57501-5070

Patrick H. Wood, III  
Chairman  
Texas Public Utility Commission  
1701 North Congress Avenue  
P.O. Box 13326  
Austin, TX 78711-3326

Sheryl Todd  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Room 5-B540  
Washington, DC 20554

Peter Bluhm  
Director of Policy Research  
Vermont Public Service Board  
Drawer 20  
112 State St., 4th Floor  
Montpieller, VT 05620-2701

Charlie Bolle  
Policy Advisor  
Nevada Public Utilities Commission  
1150 E. Williams Street  
Carson City, NV 89701-3105

Rowland Curry  
Policy Consultant  
Texas Public Utility Commission  
1701 North Congress Avenue  
P.O. Box 13326  
Austin, TX 78701

Ann Dean  
Assistant Director  
Maryland Public Service Commission  
6 Paul Street, 16<sup>th</sup> Floor  
Baltimore, MD 21202-6806

Carl Johnson  
Telecom Policy Analyst  
New York Public Service Commission  
3 Empire State Plaza  
Albany, NY 12223-1350

Lori Kenyon  
Common Carrier Specialist  
Alaska Public Utilities Commission  
1016 West 6th Ave, Suite 400  
Anchorage, AK 99501

David Dowds  
Florida Public Service Commission  
2540 Shumard Oaks Blvd.  
Gerald Gunter Bldg.  
Tallahassee, FL 32399-0850

Greg Fogleman  
Florida Public Service Commission  
2540 Shumard Oaks Blvd.  
Gerald Gunter Bldg.  
Tallahassee, FL 32399-0850

Doris McCarter  
Economist  
Ohio Public Utilities Commission  
Telecommunications, 3rd Floor  
180 East Broad St.  
Columbus, OH 43215

Philip McClelland  
Assistant Consumer Advocate  
PA Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5th Floor  
Harrisburg, PA 17101-1923

Susan Stevens Miller  
Assistant General Counsel  
Maryland Public Service Commission  
16th Floor, 6 Paul Street  
Baltimore, MD 21202-6806

Mary E. Newmeyer  
Federal Affairs Advisor  
Alabama Public Service Commission  
100 N. Union Street, Ste. 800  
Montgomery, AL 36104

Tom Wilson  
Economist  
Washington Utilities & Transportation Commission  
1300 Evergreen Park Drive, S.W.  
P.O. Box 47250  
Olympia, WA 98504-7250

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

|   |   |                     |
|---|---|---------------------|
| In the Matter of                                | ) |                     |
|   | ) |                     |
| Federal-State Joint Board on Universal Service: | ) | CC Docket No. 96-45 |
|   | ) |                     |
| Reply Comments on the Interim                   | ) |                     |
| Hold-Harmless Provision                         | ) |                     |

**REPLY COMMENTS OF THE INDEPENDENT TELEPHONE AND  
TELECOMMUNICATIONS ALLIANCE**

David W. Zesiger  
Executive Director  
INDEPENDENT TELEPHONE AND  
TELECOMMUNICATIONS ALLIANCE  
1300 Connecticut Avenue, N.W., Suite 600  
Washington, D.C. 20036  
(202) 775-8116

Karen Brinkmann  
Richard R. Cameron  
LATHAM & WATKINS  
1001 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
(202) 637-2200  
Attorneys for the INDEPENDENT TELEPHONE  
AND TELECOMMUNICATIONS ALLIANCE

December 15, 1999

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

|   |   |                     |
|---|---|---------------------|
| In the Matter of                                | ) |                     |
|   | ) |                     |
| Federal-State Joint Board on Universal Service: | ) | CC Docket No. 96-45 |
|   | ) |                     |
| Reply Comments on the Interim                   | ) |                     |
| Hold-Harmless Provision                         | ) |                     |

**REPLY COMMENTS OF THE INDEPENDENT TELEPHONE AND  
TELECOMMUNICATIONS ALLIANCE**

THE INDEPENDENT TELEPHONE AND TELECOMMUNICATIONS ALLIANCE (ITTA), through its attorneys, hereby submits the following reply comments in response to the Public Notice of the Federal-State Joint Board on Universal Service (Joint Board) seeking comment on the phase-out or elimination of the interim hold-harmless mechanism the Commission adopted as part of its new forward-looking high cost universal service support mechanism for non-rural carriers.<sup>1</sup>

**I. INTRODUCTION AND SUMMARY**

ITTA is a an organization of midsize incumbent local exchange companies (LECs) each serving less than two percent of the nation's access lines. ITTA members collectively serve over six million access line in 40 states and offer a diversified range of services to their customers. ITTA's smallest member company serves under 100,000 access lines, while its largest serves just over two million. While most ITTA members currently meet the definition of a rural telephone company contained in section 153(37) of the Communications Act of 1934, as amended

---

<sup>1</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Public Notice, FCC 99J-2 (rel. Nov. 3, 1999) (Public Notice).

(Communications Act), not all do. ITTA members Roseville Telephone Company, North State Telephone Company, Alaska Communications Systems, and Cincinnati Bell Telephone Company for example, are considered non-rural in whole or in part under the Communications Act and are subject to the Commission's new non-rural universal service support mechanism.

In October, the Commission adopted two orders that, taken together, finalize for initial implementation the Commission's new forward-looking high cost support mechanism for non-rural local exchange carriers. Beginning January 1, 2000, federal high cost support to maintain affordable and reasonably comparable intrastate rates will primarily be calculated using a forward-looking cost model that estimates the costs of providing all of the services supported by federal mechanisms, and a multi-step process that computes deaveraged support amounts by wire center based on the model's relative cost estimates. The Commission also adopted a hold-harmless mechanism that is designed to protect customers against rate shock in the event that a carrier's support under this new mechanism is less than the support it would receive under the former Part 36 mechanism, combined with any long term support (LTS) it receives under Part 54.

ITTA supports the comments of the National Exchange Carrier Association (NECA) and the Roseville Telephone Company, and echoes the concerns these commenters voice with respect to the elimination of hold-harmless amounts attributable to the operation of the LTS mechanism now contained in section 54.303 of the Commission's rules.<sup>2</sup> In these reply comments, ITTA urges the Joint Board and, ultimately, the Commission (1) not to phase out or otherwise eliminate LTS-based hold-harmless amounts; and (2) to defer any action at this time on other hold-harmless amounts attributable to support formerly received under the former Part 36 high cost support mechanisms.

---

<sup>2</sup> 47 C.F.R. § 54.303.

## II. THE COMMISSION SHOULD PRESERVE AND BUILD UPON ITS LTS MECHANISM

The Commission's hold-harmless mechanism, as currently constituted, is comprised of two types of support that have fundamentally different characteristics and that must be analyzed individually. The mechanism adopted in the Commission's October 1999 *Methodology Order*<sup>3</sup> holds a carrier harmless during a transition period beginning in January, 2000 if the amount it would receive under the new mechanism is less than the aggregate amount it would have received under the Part 36 high cost loop support mechanism and the LTS mechanism contained in section 54.303.

Any elimination or phase-out of hold-harmless amounts attributable to LTS would represent a substantial backward step in the Commission's efforts, in tandem with the Joint Board, to reform federal universal service mechanisms. LTS currently is one of the few existing explicit mechanisms supporting reasonably comparable interstate access charges. The Commission's new mechanism was not intended to replace LTS and, as such, the Joint Board should recommend no action to phase out LTS support for any carrier.

The new federal universal service support mechanism "is designed to achieve reasonable comparability of intrastate rates among states based solely on the interstate transfer of funds."<sup>4</sup> As such, it is calculated in a fundamentally different way from LTS, and is intended for a fundamentally different purpose. LTS ensures that the carrier common line (CCL) rate charged by participants in the pooled interstate common line tariff administered and filed by NECA remain reasonably comparable to the national average CCL rate that would prevail if all carriers still continued to participate in the NECA common line pool. Unlike federal support to ensure

---

<sup>3</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, FCC 99-306 (rel. Nov 2, 1999).

<sup>4</sup> *Id.* at para. 45.



affordable and reasonably comparable intrastate rates, therefore, LTS supports interstate access charges, and has no effect on intrastate rates whatsoever. As the Commission recently reiterated, “carriers that set their access charges through participation in the NECA common line pool, including a few non-rural carriers, also may receive . . . LTS, which provides explicit support to reduce those carrier’s loop-related [interstate] access charges.”<sup>5</sup>

The Commission made the LTS mechanism explicit and portable in its 1997 *Universal Service Order*, after concluding that LTS, as then-collected and distributed, constituted an impermissible implicit support mechanism for interstate common line access charges.<sup>6</sup> Far from eliminating or phasing-out LTS payments, the Commission should build on this initial step, taken over two years ago, in its ongoing efforts to identify and render explicit support that may remain implicit in interstate access charges.

The Joint Board has previously declined to make quantitative recommendations to the Commission regarding the elimination of support implicit in interstate access charges, even while making general recommendations and recognizing the Commission’s authority in this area.<sup>7</sup> Given that the Commission has not yet acted on the Joint Board’s earlier response, but has announced its intent to consider issues relating to support that may be implicit in interstate access charges in a future order,<sup>8</sup> the Joint Board should reiterate its earlier finding that the Commission should continue to consult with the Joint Board before taking final action in this area.

---

<sup>5</sup> *Id.* at para. 14. In addition to the Puerto Rico Telephone Company, ITTA members Roseville Telephone Company and North State Telephone Company are non-rural carriers under the definition in the Communications Act that receive LTS. See Federal Universal Service Programs Fund Size Projections and Contribution Base for the First Quarter 2000, Universal Service Administrative Company, at Appendix 1 (filed Nov. 2, 1999).

<sup>6</sup> *Federal-State Joint Board on Universal Service*, Report and Order, 11 FCC Rcd 8776, 9163-65 (1997) (subsequent history omitted).

<sup>7</sup> *Federal-State Joint Board on Universal Service*, Second Recommended Decision, 13 FCC Rcd 24744 (Jt. Bd. 1998).

<sup>8</sup> *Methodology Order*, at para. 2, n.9.

Indeed, the Commission's conclusion to eliminate hold-harmless amounts attributable to LTS is in utter conflict with the Joint Board's recent recommendation that the Commission ensure "that any efforts to replace implicit support in interstate access charges with explicit support do not jeopardize the reasonable comparability standard, or harm consumers generally, or any class of consumers in particular."<sup>9</sup> If the Commission were to phase out LTS for non-rural carriers, it would essentially replace explicit support for interstate access charges with reduced, if any, support for intrastate rates generally. Such action would not benefit consumers or the public interest generally, but would increase the disparity among CCL rates in urban and rural areas, placing increasing strain on the statutory rate integration standard of section 254(g).

### **III. THE COMMISSION SHOULD NOT REDUCE ANY HOLD-HARMLESS AMOUNTS UNTIL IT GAINS ADDITIONAL EXPERIENCE WITH THE NEW MECHANISM.**

Hold-harmless amounts other than those attributable to LTS consist of support for intrastate rates that has historically been based on incumbent LEC embedded loop costs but that would not be provided under the Commission's new mechanism. The model and the new support methodology comprise a new, untested mechanism that, for some carriers and some states, produces very different support levels than those they historically have received. These changes need to be examined and digested by states and integrated into their intrastate rate structures and levels. The Commission, the Joint Board, the industry, and other interested parties have poured forth prodigious effort over the past three years to create the new forward-looking cost model and support methodology adopted by the Commission this past October. The Commission and the Joint Board are to be commended for their prudence in adopting the hold-harmless

---

<sup>9</sup> *Federal-State Joint Board on Universal Service*, Second Recommended Decision, 13 FCC Rcd 24744, 24755 (Jt. Bd. 1998).

mechanism, despite their eagerness to see this new mechanism work, to eliminate the remaining vestiges of the old embedded cost mechanism, and to move ahead to their remaining tasks.

The risk to carriers, their customers, the public interest, and the Joint Board's and the Commission's universal service goals is too great for the Commission to eliminate any support amounts until all parties gain additional experience with the new mechanism.<sup>10</sup> In fact, the reasons for maintaining hold-harmless support until after the conclusion of the comprehensive review closely parallel the reasons underlying the original adoption of hold-harmless. Universal service support, particularly for smaller rural and non-rural carriers, represents a critical piece of the equation in providing high quality service to customers at affordable and reasonably comparable rates.

Accordingly, the Joint Board should recommend that the Commission continue to provide hold-harmless support until the Commission and the Joint Board have completed their comprehensive review of the operation of the new mechanism.<sup>11</sup> This additional experience is absolutely necessary under the Commission's conclusions that any phase-out or elimination of hold-harmless amounts should be accomplished only "as carriers and states adapt to the new forward-looking mechanism" and should cause no "undue disruption to consumer rates in high cost areas."<sup>12</sup> Premature elimination of the hold-harmless mechanism will subject carriers, their customers, and state commissions to dangerous and preventable support fluctuations if the comprehensive review eventually reveals that the new mechanism has not functioned as well as the Commission and the Joint Board now hope.

---

<sup>10</sup> See Roseville Telephone Company comments at 7-10.

<sup>11</sup> This review is scheduled to be complete by January 1, 2003. *Methodology Order* at para. 88.

<sup>12</sup> *Id.*

Like the Rural Telephone Coalition, ITTA also is concerned that decisions made in the non-rural context could influence future decisions directly affecting universal service support mechanisms for rural carriers.<sup>13</sup> The Joint Board has created the Rural Task Force (RTF) to consider carefully the impact of changes in universal service mechanisms on rural companies. As such, the RTF will necessarily observe and take note of the Joint Board's actions in this area. To minimize the potential for the Joint Board unduly to influence the deliberations of the RTF, ITTA urges the Joint Board to make clear that it is NOT prejudging these issues for rural carriers, no matter what the Joint Board recommends with respect to the phase-out or elimination of hold-harmless for non-rural carriers.

#### **IV. STATE COMMISSIONS MUST BE GIVEN ADEQUATE TIME TO ADAPT LOCAL RATE STRUCTURES TO THE NEW MECHANISM**

Beyond the Commission's and Joint Board's analysis of the operation of the new mechanism, each affected state must be given an adequate opportunity to consider the impact elimination of hold-harmless support will have on carriers and their customers within its borders. Before the hold-harmless mechanism is phased-out or otherwise eliminated in a state, that state must have adopted a plan to adapt intrastate rate designs to any reduction in support.<sup>14</sup>

The Joint Board should therefore recommend a policy that affords state commissions adequate time to consider the entire range of issues raised by the proposed reductions in federal high cost support. A fixed timetable that either begins too soon or proceeds too quickly could rob carriers and state commissions alike of the time they need to protect telecommunications consumers.

The record in this proceeding reveals that the states have not yet had an adequate opportunity to focus on these issues. The Commission has indicated that fourteen states and

---

<sup>13</sup> Rural Telephone Coalition comments at 2.

Puerto Rico will receive hold-harmless support in 2000.<sup>15</sup> Despite this widespread impact, the California Commission was the only one of these state commissions to file comments on this matter. The California Commission's comments, however, do not fully acknowledge the localized impact elimination of the hold-harmless support will have on certain of its own ratepayers. While the California Commission calculates that the impact of the elimination of the hold-harmless mechanism on a statewide basis will be \$0.27 per USF loop per year, it does so on the assumption that these costs will be spread evenly across all California ratepayers.<sup>16</sup> The California Commission's comments, however, make no reference to any intent to conduct a proceeding to spread these costs across all California loops, as this calculation would seem to imply. Only one carrier in California, however – the Roseville Telephone Company – receives hold-harmless support in California. With only 128,000 lines, the direct impact on Roseville Telephone Company's customers, absent intervention by the California Commission, will be at least \$45.09 per year.<sup>17</sup> The California Commission's comments also make no reference to any intent to deal with the impact of this reduction on this smaller number of ratepayers, and certainly does not indicate that it can do so within one year

Accordingly, even beyond the Joint Board process and participation by individual state commissions in this proceeding, each affected state commission must conduct its own

---

<sup>14</sup> Such adaptation could be accomplished, for example, through some combination of explicit state universal service support or through changes to affected carriers' rate designs.

<sup>15</sup> Public Notice, CC Docket Nos. 96-45 and 97-160, Common Carrier Bureau Releases State-by-State Universal Service High-Cost Support Amounts for Non-Rural Carriers and Forward-Looking Cost Model Results, DA 99-2399 (rel. Nov. 2, 1999).

<sup>16</sup> The California Commission divides estimated hold-harmless support for Roseville Telephone Company of \$5,771,700 by all 21,482,732 lines in California to arrive at this figure. California Commission comments at Attachment 2. In fact, USAC estimates that hold harmless support for Roseville Telephone Company in 2000 will be roughly \$6.4 million. *See* Federal Universal Service Programs Fund Size Projections and Contribution Base for the First Quarter 2000, Universal Service Administrative Company, at Appendix 1.

<sup>17</sup> Using 1999 support of \$5,771,700 divided by 128,000 USF loops. Using USAC's 2000 projection, the per loop impact grows to \$49.78 per USF loop.

proceedings, together with the affected carriers, to develop a transitional plan to minimize the effects reductions in support will have on local rates.<sup>18</sup>

Given the Commission's inclusion of LTS amounts in the hold-harmless calculation, many states may not even have had the opportunity fully to appreciate the magnitude of the task they are facing. If the Commission truly intended for states to adapt their intrastate rate structures to account for the elimination of LTS, states will need substantial additional time to consider the panoply of unusual issues this result raises, including potential separations issues and a significantly greater potential impact on local rates.<sup>19</sup> Accordingly, the Joint Board should recommend that the Commission preserve the interim hold-harmless mechanism in each state until that state commission concludes a proceeding to examine the effects of the elimination of hold-harmless support on intrastate rates.

---

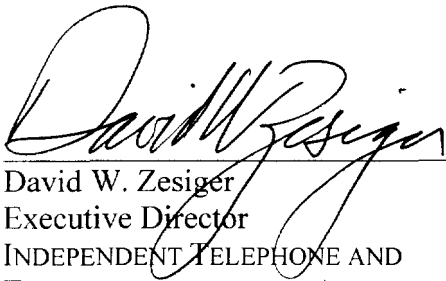
<sup>18</sup> While the California Commission believes that it could conclude such an examination within one year, California Commission comments at 4, it is not clear from the record that every affected state commission could do so. In any event, ITTA's observation of both Commission and state-level efforts to reform universal service indicates that, given the complexity of the issues involved, California's estimate is highly optimistic.

<sup>19</sup> Roseville Telephone Company, for example, estimates a total per-line impact of approximately \$4.00 monthly from the elimination of hold-harmless support, of which roughly \$3.00 represents the impact of the elimination of LTS. Roseville Telephone Company comments at 9.

## V. CONCLUSION

For the foregoing reasons, the Joint Board should recommend against any elimination or phase-out of interim hold-harmless amounts attributable to long term support, and should defer any elimination or phase-out of other hold-harmless amounts until: (1) the Commission and the Joint Board have completed their comprehensive review of the operation of the new support mechanism; and (2) each affected state has considered the impact elimination of hold-harmless support will have on carriers and their customers within its borders, and has adopted a plan to adapt intrastate rate designs to this reduction in support.

Respectfully submitted:



David W. Zesiger  
Executive Director  
INDEPENDENT TELEPHONE AND  
TELECOMMUNICATIONS ALLIANCE  
1300 Connecticut Avenue, N.W., Suite 600  
Washington, D.C. 20036  
(202) 775-8116



Karen Brinkmann  
Richard R. Cameron  
LATHAM & WATKINS  
1001 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
(202) 637-2200  
Attorneys for the INDEPENDENT TELEPHONE  
AND TELECOMMUNICATIONS ALLIANCE

December 15, 1999